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SERVICE DATE - OCTOBER 28, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-55 (Sub-No. 634X)

CSX TRANSPORTATION, INC.–ABANDONMENT EXEMPTION–IN MONROE
COUNTY, IN

Decided: October 26, 2004

By decision and notice of interim trail use or abandonment (NITU) served on October 17, 2003, the Board granted the petition for exemption filed by CSX Transportation, Inc. (CSXT), for abandonment of a 2.95-mile line of railroad, in CSXT's Western Region, Great Lakes Division, extending from milepost 00Q-219.55 to milepost 00Q-222.50, in Bloomington, Monroe County, IN.¹ The exemption was subject to public use, historic preservation, and standard employee protective conditions, as well as a trail use condition authorizing a 180-day period for the City of Bloomington, acting by and through its Redevelopment Commission (Bloomington), to negotiate an interim trail use/rail banking agreement with CSXT for the right-of-way involved in this proceeding. The negotiating period was extended through October 11, 2004, by a decision served on April 26, 2004.

On October 6, 2004, CSXT filed a request for an extension of the NITU until April 11, 2005. CSXT states that an extension of time is necessary to finalize negotiations. Additionally, CSXT requests an extension of the consummation notice filing deadline until June 11, 2005.²

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Because an extension

¹ The October 17, 2003 decision stated that, if consummation has not been effected by CSXT's filing a notice of consummation by October 17, 2004, and there are no legal barriers to consummation at that time, the authority to abandon would automatically expire. The pendency of conditions, including trail use conditions, serves to extend the deadline for consummation of the abandonment until 60 days after the expiration, satisfaction, or removal of the legal or regulatory barrier to consummation.

² Under 49 CFR 1152.29(e)(2), a railroad may, for good cause shown, file a request for an extension of time to file a notice of consummation in abandonment proceedings.

of the consummation notice filing deadline and the NITU negotiating period will promote the establishment of trail use and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d), the requested extensions will be granted. Accordingly, the NITU negotiating period will be extended to April 11, 2005,³ and the consummation notice filing deadline will be extended to June 11, 2005.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. CSXT's requests to extend the NITU negotiating period and to extend the time to exercise the abandonment authority are granted.
2. The negotiating period under the NITU is extended to April 11, 2005.
3. The authority to abandon must be exercised on or before June 11, 2005.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

³ Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).